

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12218 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgment?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

GOPAL ALIAS BIJAL BHIKHA RATHOD

Versus

STATE OF GUJARAT

Appearance:

Ms. Datta, with MR AR SHAIKH for the Petitioner.
Mr.V.M. Pancholi, Assistant GOVERNMENT PLEADER,
for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 29/01/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu
has challenged his detention order dated 21.5.2002. By
the aforesaid order, the petitioner is detained under the
provisions of the Prevention of Anti-social Activities

Act, 1985 ("PASA", for short) as a bootlegger. Along with the detention order, the petitioner is served with the grounds of detention, wherein the activities undertaken by the petitioner are mentioned. In the grounds of detention, a list of two cases pending against the petitioner is also submitted.

At the time of hearing of this petition, it is pointed out by the learned Advocate for the petitioner that one Vijaybhai Chimanbhai Odd, who is a co-accused with the petitioner-accused in the criminal case and his case is identical to the case of the petitioner, had filed Special Civil Application No.7510 of 2002, and this Court (Coram : R.P. Dholakia, J.) has released the detenu on the ground of delay in passing the detention order.

In the instant case also, there is a delay of about two months after recording the statement of the last witness. There is absolutely no explanation for such delay, as, no affidavit-in-reply has been filed by the respondents. In paragraph 4 of the aforesaid judgment dated 18th October, 2002, in Special Civil Application No.7510 of 2002, this Court has observed as under :-

"

4. It appears that the last offence is registered against the detenu on 18.10.2001 and the order of detention has been passed on 21.5.2002 and hence, there is a delay of more than seven months in passing the order of detention. No affidavit has been filed either by the detaining authority or by the State explaining satisfactorily the delay caused in passing the order of detention. Therefore, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

... .."

Since the facts of the present case are identical as compared to Special Civil Application No.7510 of 2002, which is disposed of by this Court, this petition also requires to be allowed. The order of detention is accordingly quashed and set aside especially in view of

delay in passing the detention order.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless he is required in connection with any other case. Rule is made absolute.

Direct service is permitted.

29th January, 2003 (P.B. Majmudar, J.)

(apj)